STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM HEFFELFINGER, Plaintiff-Appellant,	UNPUBLISHED December 2, 2014
v	No. 318347 Huron Circuit Court
BAD AXE PUBLIC SCHOOLS, Defendant-Appellee.	LC No. 13-105215-CK

Before: RIORDAN, P.J., and SAAD and TALBOT, JJ.

PER CURIAM.

Plaintiff, William Heffelfinger, appeals as of right the trial court order granting summary disposition in favor of defendant, Bad Axe Public Schools. We affirm.

I. FACTUAL BACKGROUND

Plaintiff was a tenured band teacher employed by Bad Axe Public Schools. Because of a 2007 incident wherein plaintiff used excessive force against a student, plaintiff entered into a "Last Chance Agreement." He agreed to refrain from certain conduct in exchange for the Board of Education declining to pursue tenure charges against him. He also agreed that if he violated the agreement, his letter of resignation attached thereto would be submitted, the Board would decide whether to accept his resignation, and he could pursue any remaining dispute through arbitration.

Subsequently, in April 2008, plaintiff was involved in an incident in the school cafeteria where he yelled at a student and counselor.[1] Thereafter, defendant informed plaintiff that it intended to enforce the Last Chance Agreement regarding his letter of resignation based on the cafeteria incident. The Board of Education conducted a meeting on June 27, 2008, and ultimately voted to accept plaintiff's resignation. Pursuant to the Last Chance Agreement,

[1] Around the same time, the superintendent began investigating plaintiff regarding pornography on his school computer, inappropriate conduct toward a female student, and underage drinking. In 2008, plaintiff filed a defamation suit against the superintendent and defendant, but ultimately was unsuccessful.

plaintiff contested the Board's decision through arbitration. After a hearing, the arbitrator affirmed the Board's decision in January 2009, finding that plaintiff violated the Last Chance Agreement in the cafeteria incident. In a separate action, plaintiff pursued unemployment benefits and ultimately obtained them in 2012.

In 2013, plaintiff initiated the instant litigation against defendant, alleging breach of contract. The thrust of plaintiff's complaint is that the Last Chance Agreement violated the Teachers' Tenure Act, MCL 38.71 *et seq*. (Tenure Act), which resulted in an improper discharge under the agreement. Defendant filed a motion for summary disposition on several grounds, including compulsory joinder, *res judicata*, and collateral estoppel. The trial court ultimately agreed with defendant and dismissed the case. Plaintiff now appeals.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

We review *de novo* the application of collateral estoppel and *res judicata*. *Estes v Titus*, 481 Mich 573, 579; 751 NW2d 493 (2008). "This Court reviews de novo a trial court's decision on a motion for summary disposition[.]" *TBCI, PC v State Farm Mut Auto Ins Co*, 289 Mich App 39, 42; 795 NW2d 229 (2010). "When reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), all well-pleaded allegations must be accepted as true and construed in favor of the nonmoving party, unless contradicted by any affidavits, depositions, admissions, or other documentary evidence submitted by the parties." *Pierce v Lansing*, 265 Mich App 174, 177; 694 NW2d 65 (2005).

B. LEGAL PRINCIPLES

As this Court has recognized: "The law abhors multiplicity of suits. Attempts to split a claim into separate causes of action have often met with disfavor." *Bergeron v Busch*, 228 Mich App 618 n 1, 621; 579 NW2d 124 (1998). The relevant court rule for compulsory joinder, MCR 2.203(A), provides:

> **(A) Compulsory Joinder.** In a pleading that states a claim against an opposing party, the pleader must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

Relatedly, the doctrine of *res judicata* is intended to prevent multiple suits where the parties litigate the same cause of action. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 418; 733 NW2d 755 (2007). It is meant to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication, that is, to foster the finality of litigation." *Bryan v JPMorgan Chase Bank*, 304 Mich App 708, 715; 848 NW2d 482 (2014).

"The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the

second case was, or could have been, resolved in the first." *Washington*, 478 Mich at 418 (quotation marks and citation omitted). Michigan courts have adopted "a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Id.* "The test for determining whether two claims arise out of the same transaction and are identical for res judicata purposes is whether the same facts or evidence is essential to the maintenance of the two actions." *Schwartz v City of Flint*, 187 Mich App 191, 194-195; 466 NW2d 357 (1991). As our Supreme Court has explained, "the assertion of different kinds or theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief." *Washington*, 478 Mich at 420 (quotation marks and citation omitted). Moreover, "[w]hether a factual grouping constitutes a transaction for purposes of res judicata is to be determined pragmatically, by considering whether the facts are related in time, space, origin or motivation." *Id.*

Collateral estoppel, in turn, applies when the following three elements are present: "(1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full [and fair] opportunity to litigate the issue; and (3) there must be mutuality of estoppel." *Holton v Ward*, 303 Mich App 718, 731; 847 NW2d 1 (2014) (quotation marks and citation omitted). Mutuality of estoppel requires that the party must have been a party, or in privity with a party, in the previous action. *Id.* "In other words, the estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it, had it gone against him." *Id.* (quotation marks, citation, and brackets omitted).

C. 2008 ARBITRATION

As noted *supra*, there was a board meeting and arbitration wherein plaintiff's "resignation" was challenged. Generally, arbitration is subject to the doctrines of *res judicata* and collateral estoppel. *Porter v Royal Oak*, 214 Mich App 478, 485; 542 NW2d 905 (1995); *Hopkins v City of Midland*, 158 Mich App 361, 370; 404 NW2d 744 (1987).

Under the doctrine of *res judicata*, defendant is entitled to summary disposition based on this prior arbitration. The subject matter at the board meeting and subsequent arbitration was the same as in this case, namely, plaintiff's "resignation" under the Last Chance Agreement. The arbitrator decided plaintiff's challenge on the merits and issued a lengthy opinion reviewing the Last Chance Agreement and plaintiff's violations thereof. See *Washington*, 478 Mich at 418 (stating that first element of *res judicata* is that the "prior action was decided on the merits[.]").

Further, plaintiff or his privy participated in the arbitration. *Id.* (stating that the second element of *res judicata* is "both actions involve the same parties or their privies[.]"). In his response to defendant's motion for summary disposition, plaintiff claimed that he was not "even allowed to have an attorney because the parties claimed he was not a party to the arbitration, but rather it was in arbitration between the union and the school district." However, plaintiff was present at the arbitration hearing, testified, and presented evidence. Further, he has not even attempted to argue that "the union" was not in privity with him. See *Adair v State*, 470 Mich 105, 122; 680 NW2d 386 (2004) ("a perfect identity of the parties is not required, only a substantial identity of interests that are adequately presented and protected by the first litigant.").

Lastly, the issue of whether the Last Chance Agreement was valid or constituted an impermissible breach of contract was, or could have been, resolved in the arbitration. *Washington*, 478 Mich at 418 (stating that the final element of *res judicata* is that "the matter in the second case was, or could have been, resolved in the first."). The arbitrator held that: "In essence, the parties have agreed that a violation of any provision of [the Last Chance Agreement] constitutes just cause for termination." Thus, plaintiff apparently conceded that a violation of the Last Chance Agreement constituted a sufficient basis for termination. Now on appeal, plaintiff argues that the arbitrator's statement was inaccurate, but he offers nothing from the arbitration proceedings to dispute the arbitrator's conclusion.

Nor does plaintiff reveal why, with reasonable diligence, he or the union could not have challenged the underlying validity of the Last Chance Agreement. The crux of the arbitration proceeding was to contest plaintiff's so-called resignation pursuant to the Last Chance Agreement. Plaintiff and his union had every reason to challenge the document at the core of that decision. Because plaintiff or his privy failed to raise this claim in arbitration, they cannot benefit from that oversight now. Accordingly, under the elements of *res judicata*, plaintiff is barred from bringing the current lawsuit.[2]

Nevertheless, plaintiff contends that the arbitration proceeding cannot be binding under the doctrines of *res judicata* or collateral estoppel because it originated from the Last Chance Agreement, which was an invalid document. However, plaintiff submitted to arbitration pursuant to that agreement. Arbitration was a bargained-for condition in the Last Chance Agreement, which plaintiff consented to in exchange for the Board forgoing tenure charges. There is no record evidence that plaintiff challenged the validity of arbitration before, during, or directly after arbitration. "Moreover, by voluntarily participating in the arbitration process without objection, [plaintiff] waived the issue whether the parties had entered into a valid agreement to arbitrate. A party may not participate in an arbitration and adopt a 'wait and see' posture, complaining for the first time only if the ruling on the issue submitted is unfavorable." *In re Nestorovski Estate*, 283 Mich App 177, 183-184; 769 NW2d 720 (2009) (quotation marks, citation, and brackets omitted).

Nor has this Court held arbitration necessarily inconsistent with the Tenure Act. See, e.g., *Farrimond v Bd of Ed of E Jordan Pub Sch*, 138 Mich App 51, 61; 359 NW2d 245 (1984); see also *Madison District Pub Sch v Myers*, 247 Mich App 583, 595; 637 NW2d 526 (2001) ("Any doubts regarding the arbitrability of an issue should be resolved in favor of arbitration.").

D. 2012 UNEMPLOYMENT BENEFITS

Plaintiff, however, contends that the circuit court's 2012 unemployment decision prevents relitigation on the issue of his termination. Plaintiff's challenge is most accurately

[2] Because of this holding, we need not reach the issue of whether the 2008 defamation suit likewise triggered the doctrine of *res judicata*.

characterized as a collateral estoppel claim, as the issue—he was discharged—is what he wishes to have preclusive effect.[3]

The circuit court's written ruling provided: "Claimant-Appellant William N. Heffelfinger was terminated from his employment as a tenured teacher by the Bad Axe Public Schools for the week ending June 28, 2008 under circumstances which did not disqualify him from benefits under §29(1)(b)[[4]] or under any other section, rule or reason[.]"[5] Plaintiff understands this to mean that he was discharged, period. Yet, the trial court's precise ruling was that plaintiff was terminated or discharged "under circumstances which did not disqualify him from benefits[.]" As our Supreme Court has stated: "In order for collateral estoppel to apply, the issue must be identical to that determined in the prior action." *Amalgamated Transit Union, Local 1564, AFL-CIO v Se Michigan Transp Auth*, 437 Mich 441, 451; 473 NW2d 249 (1991). Here, the issue is not identical as it deals with the validity of the Last Chance Agreement. Therefore, plaintiff's argument is without merit.

III. CONCLUSION

The trial court properly ordered summary disposition in favor of defendant because *res judicata* bars the current suit. We have reviewed all remaining claims and find them to be without merit. We affirm.

/s/ Michael J. Riordan
/s/ Henry William Saad
/s/ Michael J. Talbot

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[3] The claim in any unemployment action is whether a claimant is entitled to benefits under the Michigan Employment Security Act (MESA), MCL 421.1 *et seq.* To the extent that plaintiff rests his argument on *res judicata*, he fails to explain how either party could have brought a breach of contract claim based on the failure to comply with the Tenure Act in the unemployment action. See *Prins v Michigan State Police*, 299 Mich App 634, 640; 831 NW2d 867 (2013) ("Plaintiff may not merely announce [his] position and leave it to this Court to discover and rationalize the factual basis for [his] claims; plaintiff has abandoned this issue, and we decline to address it.").

[4] MCL 421.29(1)(b) provides that an individual is precluded from unemployment benefits if he "[w]as suspended or discharged for misconduct connected with the individual's work or for intoxication while at work."

[5] While there was a hearing in the circuit court, the parties did not provide the transcript below. Regardless, "a court speaks through its written orders and judgments, not through its oral pronouncement." *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009).